

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DONNA SPINA,

Civil Action

Plaintiff,

Case No.:

-against-

NOTICE OF REMOVAL

WHOLE FOODS MARKET GROUP, INC.,

Defendant.

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Defendant, WHOLE FOODS MARKET GROUP, INC., by its attorneys, FISHMAN
McINTYRE LEVINE SAMANSKY P.C., respectfully petitions the United States District Court,
Southern District of New York, upon information and belief, as follows:

1. This case was originally commenced on or about October 23, 2021 in the Supreme Court of the State of New York, County of Westchester. The suit is identified in the Supreme Court as “*Donna Spina v. Whole Foods Market Group, Inc.*”, Index No. 65562/2021. A true copy of plaintiff’s Summons and Verified Complaint are cumulatively annexed hereto as **Exhibit A**.

2. Defendant first received notice of the suit when service was effectuated upon CT Corporation, their registered agent for service of process in New York, on or about January 18, 2022. (See **Exhibit B** hereto).

3. The grounds for removal are based on the original jurisdiction of this Court under 28 U.S.C. § 1332, which allows this Court to hear matters based on diversity of citizenship of the parties.

4. In plaintiff’s Complaint, plaintiff does not specify a monetary amount of damages claimed. Rather, plaintiff claims damages of a non-monetary amount as a result of alleged personal “serious injuries” sustained in connection with the alleged occurrence. See **Exhibit A**, para. 15, 18.

5. However, on or about July 2, 2022, by way of response to defendant’s demand for a statement of damages pursuant to C.P.L.R. § 3017, plaintiff has “demanded for damages the amount

of \$2,500,000.00.” A true copy of plaintiff’s response to Whole Foods’ demand for damages, dated July 2, 2022, is annexed hereto as **Exhibit C**.

6. Therefore, this Notice of Removal is being filed within 30 days of plaintiff’s response to Whole Foods’ demand for a statement of damages.

7. Based upon the foregoing, there can be no doubt that the amount in controversy herein exceeds \$75,000.00, exclusive of interest and costs.

8. According to her Verified Bill of Particulars, plaintiff is a resident of the State of New York, County of Westchester (See **Exhibit D** hereto, at para. 29).

9. On or about December 2, 2021, defendant served on plaintiff’s counsel a Request to Admit, namely that as of the date the cause of action arose (i.e., the date of plaintiff’s alleged accident), plaintiff was a citizen of the State of New York. (See Request to Admit annexed hereto as **Exhibit E**). Plaintiff did not respond to defendant’s Request to Admit within the 30-day time permitted by C.P.L.R. § 3123(a). Thus, Whole Foods’ demands concerning plaintiff being a citizen of the State of New York at the time the cause of action arose are deemed “admitted”. See C.P.L.R. § 3123(a).

10. Defendant, Whole Foods Market Group, Inc., is a foreign corporation, incorporated in the State of Delaware and having its principal place of business in Austin, Texas (see **Exhibit F**).

11. As touched on above, plaintiff is a citizen of the State of New York. Defendant, Whole Foods Market Group, Inc., is a foreign corporation, incorporated in a state other than New York, and having its principal place of business in a state other than New York. As such, this action is between plaintiff, a citizen of one state, and defendant, Whole Foods, a corporate citizen of a different state.


12. Based upon the foregoing, diversity of citizenship exists.

13. Written notice of the filing of this Notice of Removal has been given to all parties in accordance with 28 U.S.C. §1446 (d), as evidenced in the annexed Certificate of Service.

WHEREFORE Petitioner, WHOLE FOODS MARKET GROUP, INC., defendant in the action described herein now pending the Supreme Court of the State of New York, County of Westchester, under Index No. 65562/2021, prays that this action be removed therefrom to this Honorable Court.

Dated: New York, New York
July 28, 2022

Yours etc.,



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